

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

LEONA FELDT,)	
)	
Plaintiff,)	CIVIL ACTION
)	
v.)	No. 12-1064-MLB
)	
KAN-DU CONSTRUCTION CORP., et al.,)	
)	
Defendants.)	
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MEMORANDUM AND ORDER

This case comes before the court on plaintiff's motion for relief from judgment pursuant to Fed. R. Civ. P. 60 and plaintiff's motion for alteration or amendment of judgment pursuant to R. 59. (Docs. 219, 220). On April 3, 2015, this court granted Heritage Home's motion to vacate the judgment on the basis that the jury award was not supported by the evidence. (Doc. 214). The court entered an amended judgment in favor of Heritage Homes. (Doc. 215).

Plaintiff filed the pending motions on May 1, 2015. On May 4, 2015, plaintiff filed a notice of appeal. (Doc. 222). Pursuant to Fed. R. App. P. 4(a)(4)(B)(i), this court has jurisdiction to consider pending Rule 59 and Rule 60 motions after a party has filed a notice of appeal. Plaintiff's notice of appeal then becomes effective after the court disposes of the motions. R. 4(a)(4)(B)(i).

Turning to the merits, plaintiff asks the court to set aside the amended judgment and restore the jury verdict against Heritage Homes. Plaintiff asserts that Heritage Homes waived "its right to present the motion for vacation of judgment because it failed to properly and timely preserve the grounds asserted therein at the time of the

announcement of the jury verdict and before the jury was excused." (Docs. 219, 220). Essentially, plaintiff contends that this court's decision to set aside the jury verdict was "truly based upon inconsistency of verdicts" and that Heritage Homes waived this defense because it was not raised at the time the jury returned its verdict. (Docs. 219, 220). Plaintiff is incorrect. This court set aside the jury verdict against Heritage Homes on the basis that the verdict was against the weight of the evidence and not allowed under Kansas law.

Moreover, Heritage Homes did not waive the defense of insufficient evidence. Heritage Homes made a Rule 50 motion at the end of trial and it was denied. Heritage Homes then renewed its motion after trial pursuant to Rule 50(b). Plaintiff fails to cite any authority to support his position that Heritage Homes was required to immediately renew its Rule 50 motion after the reading of the verdict. Rule 50(b) clearly allows a party 28 days to renew the Rule 50 motion after judgment is entered.

Plaintiff's motions are therefore denied. (Docs. 219, 220).

IT IS SO ORDERED.

Dated this 11th day of June 2015, at Wichita, Kansas.

s/ Monti Belot
Monti L. Belot
UNITED STATES DISTRICT JUDGE